



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

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27 May 1994

Mr. Gary Nigbur
Utah Power & Light
P.O. Box 468
BEAVER UT 84713

RE: DISTRIBUTION OF WATERS OF SOUTH FORK OF BEAVER RIVER

Mr. Nigbur:

Pursuant to our discussions and research related to the captioned distribution, this letter is provided to advise you of our current understanding of the matter.

Other than a few on-stream stockwatering rights, there are only three rights on the South Fork. These three rights, which all arise from awards in the 1931 Beaver River Decree, can be summarized as follows:

AWARD	PRIORITY	FLOW(cfs)	POINT OF DIVERSION	REMARKS
1(b)	5/16/1907	10.0	N 100' & E 700' from W¼ Corner, Sec. 32, T29S, R5W, SLB&M.	Water right <u>77-7</u> ; Appl. 1378, Cert. 182; Use 1/1 - 12/31
2(a)	1890	(N/A)	N 560' & W 100' from E¼ Corner Sec. 8, T30S, R5W, SLB&M.*	Water rights <u>77-4 & 77-407</u> ; storage in Kents Lake Reservoirs from 4/1 through 6/30

*Points of diversion in the 1931 Decree and later Proposed Determination are not consistent nor are they compatible with the currently known point. These are believed to be clerical errors. The point indicated here was scaled from the USGS Quad "Circleville Mountain", 7.5' Series.

The Award 2(a) rights, being owned by Beaver City (77-4) and Kents Lake Reservoir Company (77-407) were later defined more specifically in an "Amended Decree" dated 8 November 1943, which stated, in part:

"...such storage right is limited to the period extending from April 1st to June 30th of each year and provided that such right to store water may be exercised when and only when the flow of Beaver River at the government gauging station at the mouth of Beaver Canyon is in excess of a flow of 164 cubic feet per second and the Kents Lake Reservoir Company is entitled to divert and store at the point above specified all water on the South Fork of Beaver River in excess of sufficient to maintain the flow . . . of 164 cubic feet per second." [Underlining added]

If we were to administer to the language of these decrees explicitly, our position would be that:

- 1) Kents Lake and Beaver City could divert their rights on the South Fork during the period of April 1 through June 30 up to the amount that could be taken without reducing the flow at the mouth of the canyon below 164 cfs. If the other tributaries to the Beaver River were able to contribute a flow in excess of 164 cfs without any contribution from South Fork, the entire flow could be diverted into the Kents Lake Reservoirs.
- 2) The water available to satisfy the UP&L right during this April 1 through June 30 period would be limited to that which must be allowed past the Kents Lake diversion in order to maintain the 164 cfs at the gauging station. During a year of reduced tributary flows, this could amount to the entire flow of South Fork.
- 3) Outside the prescribed period for storage in Kents Lakes, the entire flow of the South Fork, up to 10 cfs, should be allowed to UP&L for diversion under Award 1(b).

The 164 cfs limit set by the 1943 decree was intended to assure satisfaction of the 1870, 1890 and 1903 ("A" and "B") direct flow rights on the Beaver before storage began. Apparently, through time, these direct flow rights have largely come into the same ownership as the storage right, thus giving these owners an "informal" ability to begin storage at flows lower than the 164 cfs limit, supposedly without interfering with any rights other than their own.

However, dry-damming of South Fork - or even taking a major part of the flow - does, in fact, have potential to interfere with UP&L's right. The decrees did not appear to contemplate this situation and offer no guidance as to the proper resolution.

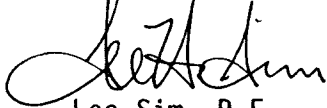
It is our understanding that the current distribution practice regarding these rights has been to allow storage in Kents Lake to begin on or about April 1, regardless of the flow in the Beaver. It is also our understanding that the UP&L hydro-plant supplied by South Fork is also supplied by the Beaver, and that the flow from the South Fork is often only needed as a "boost" to get the plant to full capacity. Because of this situation, UP&L has had no particular concern with the South Fork being diverted "informally" to Kents Lake provided that sufficient water is left in the stream to supply this "boost".

If this understanding is correct, our office would have no problem with UP&L, Kents Lake Reservoir Co. and Beaver City working out among themselves a distribution of South Fork which does not strictly adhere to the 164 cfs limitation, provided that no other rights are adversely affected.

Gary Nigbur
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We would encourage you to continue your efforts to establish a level of communication and coordination with those other parties which will enable you to reach an amicable solution to the potential conflicts. If such a solution cannot be achieved and our office is asked to enforce the current decrees, our enforcement would probably take the form described at the top of page 2, above.

Sincerely,



Lee Sim, P.E.
Assistant State Engineer - Distribution

LS:KEC:xx

PC: Mr. Carly Burton, UP&L/1407 W. North Temple, Ste. 270/ SLC 84140
Mr. Ronnie Roberts, Distribution Commissioner
Mr. Robin Bradshaw, Kents Lake Reservoir Co.
Mr. Kerry Carpenter, Southwestern Region

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